

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION
SUBCOMMITTEE ON SB 146 -- JUDICIARY**

Call to Order: By **SEN. MICHAEL WHEAT**, on January 25, 2005 at
11:04 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, (D)
Sen. Jesse Laslovich (D)
Sen. Lynda Moss (D)

Members Excused: Sen. Dan McGee (R), Chairman

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Subcommittee Discussion on SB 146

SEN. MICHAEL WHEAT, SD 32, asked that stakeholders begin discussions by outlining those areas of SB 146 that needed to be changed, clarified, or amended. The substance of the proposed amendments would be discussed at a later meeting.

{Tape: 1; Side: A; Approx. Time Counter: 1.6 - 6.8}

Stakeholders Proposing Amendments:

Gordon Morris, Director, MT Association of Counties (MACo), stated that **Section 14-- Legislative findings -- cost sharing**, proposes that counties and municipalities share, with the state, the cost of funding the public defender system by way of an unidentified dollar amount to be adopted on an annual basis by the Montana Public Defender Act--15.6% to be provided by counties and 6.7% to be provided by cities and municipalities. MACo discussed with the Law and Justice Interim Committee the possibility of making a one-time, up-front payment through the entitlement program.

MACo also conducted a survey and found that in fiscal year 2004, some counties had no public defender costs. It believes that no county should escape sharing in the ultimate costs that are determined. He suggested that if the formula in Section 14 is used to determine how to allocate a cost to each county, the Committee could fix on a number and spread that number back to counties and municipalities using the population, taxable value, and crime rate allocations set forth in Section 14. This could determine a fair dollar amount for each county and municipality to pay. By doing this, counties and municipalities do not have to write a check each year. In 2001, the county entitlement gave the state \$18.6 million to fund the District Court assumption and \$9 million for welfare. MACo believes that the \$1,040,000 could be given in the same fashion.

In conclusion, **Mr. Morris** said that he would be meeting with **Pam Bucy, Department of Justice (DOJ)**, to prepare an amendment to SB 146.

{Tape: 1; Side: A; Approx. Time Counter: 6.9 - 19.9}

Jacqueline Lenmark, American Civil Liberties Union (ACLU), and **speaking for Pam Bucy, DOJ**, said that she prepared draft amendments for Committee review. The amendments have been discussed at length and in detail between the ACLU and the DOJ, prepared in a segregated format, and agreed upon.

Amendment #1 -- NEW SECTION (5) -- Public defender commission;

Recommendation that the commission be expanded by an additional four members--one each from an organization advocating for racial minorities, people with mental illness and developmental disabilities, and the indigent, and one employee of an organization that provides addictive behavior counseling.

EXHIBIT(jus100a01)**Amendment #2 -- NEW SECTION (13) -- Eligibility -- processing fee -- determination of indigence and partial indigence -- contributions toward costs -- rules.**

Recommendation that the provisions related to "partial indigence" be eliminated from SB 146. It is felt that in light of the fiscal restraints, it is wiser to better understand the use of the public defender system and the cost associated with it before it is extended to a further population. The indigent population should be addressed first. The system could then be revisited to see whether there is room to expand it to those who are partially indigent.

EXHIBIT(jus100a02)

Following NEW SECTION (8), insert:

Amendment #3 -- NEW SECTION (9) -- Office of appellate defender - chief appellate defender.

The DOJ and ACLU felt it important that the position of chief appellate defender be clearly described and the duties of the chief appellate defender be enumerated. The amendment would set up an office that would be at the same level in the organization as the regional deputy defenders. However, it would handle only the appellate work in the public defender system. The rationale is that the appellate work requires a different set of skill and expertise that would be better handled through one office handling appeals rather than in the many regional offices that SB 146 contemplates.

EXHIBIT(jus100a03)**Amendment #4 -- Amending Section 53-30-110, MCA -- Expense of trial for offenses committed in prison.**

Current statutes provide that if a person is incarcerated at the Montana State Prison (MSP) or around the state and if a trial is held involving that individual, the county in which the trial is held pays for the cost of the trial. Those costs are certified by the District Judge of the county and sent to the Department of Corrections. The Department pays for the trial out of money appropriated to it in the biennium. It is believed that those trials should be subsumed within the public defender system if the defendant is indigent and eligible for assigned counsel. This is a concept amendment.

EXHIBIT(jus100a04)

Amendment #5 -- Technical amendments.

These amendments provide references to the Supreme Court standards for capital cases and the type of data that is necessary to be collected to satisfy the stipulation settling the lawsuit. It also gives the Commission, Legislature, and the Governor the information they need, on an ongoing basis, to evaluate the system and continually work toward its improvement and implementation.

EXHIBIT(jus100a05)

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Betsy Brandborg, State Bar of Montana, spoke in general support of SB 146.

{Tape: 1; Side: A; Approx. Time Counter: 20.4 - 22.8}

Alec Hansen, MT League of Cities and Towns, said that in reviewing the fiscal spreadsheet prepared by the Legislative Fiscal Division (LFD), he sees no anomalies or figures that jump off the page. However, he would like to send the spreadsheet to members of the League and allow them to compare what they are currently spending with what they are likely to spend under SB 146. He added that he is not offering amendments at this time, but if there is something that shows up in the proposed distribution matrix that is obviously wrong or unfair, he felt it better to know ahead of time.

Mr. Hansen requested the consideration of an amendment in regard to the entitlement program. He said that the League does not want the state or anyone else to have access to the municipal bank accounts. The entitlement program was established by a bill passed by the 2001 Legislature, and cities are very jealously

guarding that money. It goes back to a bill considered in a previous session where, if a city or county had an environmental fine or other alleged liability or if they owed money to the state, the state could automatically dip into that bank account. He did not believe that to be good practice. If cities and towns are going to pay for the public defender system, send them a bill and they will remit payment just like everything else is paid for in Montana.

{Tape: 1; Side: A; Approx. Time Counter: 22.8 - 24.1}

Jani McCall, Cities of Billings and Missoula, agreed with **Mr. Hansen** in that they preferred to not see the entitlement used for the public defender system. Billings and Missoula also have concerns about the fiscal note, and they would like the opportunity to review the numbers. She also requested that the Committee consider exempting cities from SB 146.

SEN. WHEAT asked if **Ms. McCall** was suggesting the exemption of cities so that they pay nothing. **Ms. McCall** said, yes, take misdemeanors offenses out of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 24.1 - 26.2}

Diana Koch, Chief Legal Counsel, Department of Corrections, said that currently, the Department is paying for public defenders who are appointed pursuant to 53-30-110, MCA, which includes anyone who is accused of committing a crime while in prison or anyone accused of an escape. The Department supports the amendment by **Ms. Lenmark** because it encapsulates the intent of SB 146 to have the public defender system be the overseer of those public defenders who are appointed for indigent prisoners.

Ms. Koch added that the amendment also states that the bills would be certified and sent to the state public defender system for payment if a public defender is appointed; and if not, if a regular attorney is appointed and paid for by the defendant, the bills would be submitted to the Department of Corrections. She said if the defendant is paying for their own attorney, she did not think those bills needed to be submitted to the Department. The section does not contemplate the Department picking up that particular expense.

{Tape: 1; Side: B; Approx. Time Counter: 6.5 - 8.8}

Linda Stahl, Missoula County, said that aside from picking up the Justice of the Peace public defender costs and the Municipal Court costs within SB 146, the remainder is a part and parcel of the District Court expenses that were transferred at the time HB

124 and SB 176 occurred. Missoula County gave the state all the money it had for that service. She preferred that Justice of the Peace Courts and Municipal Courts be excluded altogether. She said that Missoula County pays approximately \$143,000 each year for the Municipal Court public defender and would gladly give that up to the state. However, it does not have room to go deeper into its budget to pay for what it would fairly argue are state costs.

{Tape: 1; Side: B; Approx. Time Counter: 8.8 - 10.1}

Dave Nielson, City Attorney, Helena, also requested additional time to study the fiscal note to ensure that the assumptions are accurate.

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. DAN MCGEE, Chairman

MARI PREWETT, Secretary

LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT ([jus100aad0.PDF](#))